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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,855	10/29/2003	Gary Click	PS5035P40-D	9772
22862	7590	12/15/2004	EXAMINER	
GLENN PATENT GROUP 3475 EDISON WAY, SUITE L MENLO PARK, CA 94025			LE, MARK T	
		ART UNIT		PAPER NUMBER
		3617		

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/697,855	CLICK ET AL. <i>[Handwritten Signature]</i>	
	Examiner	Art Unit	
	Mark T. Le	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 November 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-16 is/are pending in the application.

4a) Of the above claim(s) 10-16 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-9 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/30/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

1. This communication is responsive to the amendments filed on November 12, 2004. Applicant's amendments and remarks have been carefully considered.
2. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheesley (US 3,797,324).

Sheesley shows basket housing 85 including a through opening (Figs 4 and 6) for receiving rod 41 with connection 99A that extends through elongated slots (column 3, lines 47-50) provided in housing 85 and rod 41. Said connection 99A of Sheesley is readable as an abutment for limiting lateral displacement of rod 41. Housing 85 of Sheesley also includes means for retaining torsion arm 64 being the bore in the housing that receives pin 91, and means for securing 41 rod to housing 85 being in the form of connection 99A (Figs. 4 and 6).

Regarding the statement of intended use "in a railroad switch", recited in the instant claims, it is considered that since the structure of Sheesley is inherently capable of the instant claimed intended use, the intended use limitation is considered met.

Regarding claim 2, note that as shown in Figure 3 of Sheesley, the head portion being the portion that receives pin 91, and the lower portion being the portion that receives one end of rod 41.

Regarding the instant claimed elongated slot recited in claim 7; consider slot 66 of Sheesley.

Regarding the instant claimed attachment point recited in claim 8, note that any point on housing 85 of Sheesley would be readable as an attachment point.

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Regarding claim 9, consider Figure 1 of Sheesley, wherein torsion arm 64 is rigidly secured to assist rod 63.

3. Responses to Applicant's arguments:

Regarding Applicant's argument that the term "basket" used in the field of railroad switches refers to a lost motion device that has a particular function in a railroad switch, it may be true in a narrower interpretation of the term. Note that a particular industry may use a particular term, i.e. basket, for a particular device, i.e. a lost motion device; however, the particular industry does not own an exclusive right to the particular term such that would preclude another structure, such as block 85 of Sheesley, from being called the same, which is a lost motion basket housing. Block 85 of Sheesley reasonably may be called as a lost motion basket housing, which house roller 90 and an end of rod 41; and block or housing 85 of Sheesley also has an elongated slot associated with connection 99A (column 3, lines 47-50), which provides a lost motion connection between rod 41 and housing 85. On the other hand, as to the instant claimed intended use of the structure as a lost motion basket housing in a railroad switch, note that such intended use limitation only requires the prior art structure to be capable of the intended use to meet the intended use limitation. In the instant case, the block 85 of Sheesley is inherently capable of being adapted for use as a lost motion basket housing as claimed; therefore, the instant claimed intended use limitation is considered met.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 703-308-3663. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner
Art Unit 3617

mle
12/10/04